

NICANOR JACINTO, PLAINTIFF AND APPELLEE, VS. CONRADO DE LEON ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 26635. May 03, 1927

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The plaintiff brings this action against the defendants for damages which he alleges to have/suffered on account of the non-fulfillment by the sheriff of his obligations with regard to the proceeds of the sale of certain property attached belonging to the judgment debtor F. W. Carpenter.

The parties entered into an agreement of facts appearing on pages 82-84 of the original record of the case, which reads as follows:

"It is agreed between the parties:

"1. That the allegations in paragraphs 1, 2 and 3 of the complaint are true.

"2. That with regard to paragraph 4, it is agreed that on the 16th of November, 1923, before the sale at public auction of said property, the plaintiff presented a claim under oath, asking the defendant sheriff of the Province of Rizal to retain the proceeds of the property which was to be sold on the 16th of November, 1923, up to the sum of P19,500, and that Exhibit A attached to the complaint is a true copy of said claim.

"3. That with regard to paragraph 5, it is agreed that the allegations therein contained are true, but that the property mentioned in said paragraph 5 and in Exhibit B, attached to the complaint, is different from that included in paragraph 3 of the complaint.

"4. That with regard to paragraph 6, no agreement is entered into since the allegations therein constitute questions of law.

"5. With regard to paragraph 7, it is agreed that notwithstanding the claim under oath presented by the plaintiff, the defendant sheriff of Rizal, though his deputy Luis Lara, sold the property mentioned in paragraph 3 of the complaint on the 16th of November, 1923, and delivered the proceeds to Carl Hess, without requiring or obtaining from him any security. That the purchaser at the public auction of such property sold by the defendant sheriff of Rizal, was the herein plaintiff himself, Dr. Nicanor Jacinto, in whose favor the said Luis Lara, deputy sheriff of Rizal, executed the proper deed of sale, copy of which, marked Exhibit C, is made a part of this stipulation of facts.

"6. With regard to paragraphs 8 and 9, it is agreed that the allegations of the same are true, but that the defendant Frank W. Carpenter, in civil case 25460, mentioned in said paragraphs 8 and 9 of the complaint in the present case, was not personally summoned, he being at the time absent from the Philippine Islands, copy of the complaint and summons having been left with E. E. Elser, attorney in fact for the said Frank W. Carpenter, and that the reduction of the sum of the final judgment in said case 25460 from P33,675.00 to P7,750.34 was made through attachments on other property belonging to Frank W. Carpenter in the Philippine Islands, to which he has not returned since the date of the filing of the complaint in said case 25460, and has not personally paid any sum on account of such judgment and has no other known property upon which any writ of execution can be levied.

"7. It is also agreed that Exhibit D is the writ of attachment mentioned in paragraph 3 of the complaint, under which writ the property was sold by the defendant sheriff of Rizal, and that said writ of execution Exhibit D,

constitutes a part of the evidence in this case.

"8. It is further agreed that the judgment in favor of Carl Hess and Frank W. Carpenter in civil case 24607, was based on promissory notes executed by Frank W. Carpenter in favor of Carl Hess, and that the final judgment in said case 24607 was rendered on June 26, 1923.

"9. It is finally agreed that the judgment in favor of Dr. Nicanor Jacinto against Frank W. Carpenter in case 25460 was based on a deed, a copy of which is attached to the complaint as Exhibit B, and which Exhibit B is dated December 29, 1922."

And upon such stipulation of facts, the case was submitted to the court a quo for decision. The lower court decided the case on June 14, 1926, the dispositive part of which reads as follows:

"The defendants Conrado de Leon(as Sheriff of the Province of Rizal, Santiago Sy Juc6, Liberato Salvador, Claudio Parungao and Mariano Santo Domingo, as sureties who guaranteed the liability of the first defendant in his capacity as sheriff, for the sum of P10,000, are sentenced to pay the plaintiff the sum of P7,750.34, with legal interest from May 12, 1924, and the costs of the present action. No execution shall issue against the sureties without first exhausting the property of the principal obligor Conrado de Leon."

The defendants appeal from said judgment, alleging that the trial court erred:

"1. In holding that the claim of the plaintiff Nicanor Jacinto against Frank W. Carpenter was a preferred credit.

"2. Even granting for the sake of argument that the alleged credit of the plaintiff against Frank W. Carpenter was preferred, the trial court erred in holding that the defendant Conrado de Leon, as provincial sheriff of Rizal, was under obligation to comply with the request of the plaintiff to retain the sum of P19,500 out of the proceeds of the sale of the properties of the said Frank W. Carpenter which had been levied upon under a writ of execution in favor of Carl Hess.

"3. In not holding that the judgment in favor of the plaintiff against Frank W. Carpenter, mentioned in paragraphs VIII and IX of the complaint, is null and void.

"4. In rendering judgment for damages in the sum of P7,750.34 in favor of the plaintiff and against the defendants."

The main question raised in this case is whether or not, according to the stipulation of facts, the plaintiff had a right to require the sheriff to retain the sum of P19,500 from the proceeds of the sale of the attached properties attached in civil case entitled Carl Hess vs. F. W. Carpenter, No. 24607 of the Court of First Instance of Manila. The plaintiff's claim to that effect was filed on November 16, 1923, and the debt which the then judgment debtor Carpenter owed the claimant, the plaintiff herein, was the balance of a credit payable on December 15th, of the same year.

Such debt, therefore, in favor of the plaintiff was not yet due at the time the complaint was filed, namely November 16, 1923 (art. 1125, Civil Code). Not being yet demandable, such credit could not, in any way, be preferred, or even be compared with the credit adjudicated in favor of Carl Hess in the judgment, the execution of which the defendant Sheriff was then carrying out in the present case.

We deem it unnecessary to state that the credits to which the Civil Code gives preference are credits due, and until they are demandable, the legal provisions on preferential credits contained in said Code are not applicable thereto. Consequently, article 1924 cited by the plaintiff herein in support of his claim, cannot be invoked.

The fact that such credit of the plaintiff is contained in a public instrument bearing a date prior to that of the judgment obtained by Carl. Hess is not, in itself, sufficient to consider such credit as preferred. Such credit had to be due before the judgment in favor of Carl Hess was rendered; on the other hand, the case of Martinez vs. Holiday, Wise & Co. (1 Phil., 194), as well as the other cases cited by the trial court in its judgment, are not applicable.

The maturity of a credit is a condition precedent in the judgment rendered thereon, because a credit that is not yet due is not within the reach of the courts, which cannot consider its preference over other credits.

If the credit of the plaintiff Jacinto were already due and payable on November 16, 1923, the date on which he filed his claim with the sheriff, its having been made in a public instrument on a date prior to the judgment in favor of Carl Hess, then article 1924 of the Civil Code would be applicable. But such is not the case; said credit, as we have stated, was not yet due on November 16, 1923.

Counsel for plaintiff, however, cites the case of *Somes vs. Molina* (15 Phil., 133), in support of his contention that all the installments of the plaintiff Jacinto's credit against the judgment debtor Carpenter, contracted by virtue of Exhibit B, constitute but one debt, appearing in a single contract which is indivisible. It must not be overlooked that at the time the credit of Molina against De la Riva was under consideration in the above cited case, the same was already due in its entirety, because all the installments had become due, and final judgments rendered for each installment. The debt in its entirety and each of its installments were already due and payable, so that the question of preference was not between a debt already due and payable and another not yet due nor payable, but was a question of preference between one installment and another of the same debt, all installments being due and payable, adjudicated in final judgments. Naturally, all installments on the debt having become due and payable, such debt became indivisible in the sense that it was contracted in a single contract and in only one instrument executed at one instance. But as to the maturity of the installments of the debt, the same are necessarily divisible, and in fact were divided, when separate and distinct actions had been instituted to exact the payment of each installment, such actions being filed as each installment became due and payable.

All this took place in the case of *Somes vs. Molina*, supra, which the plaintiff cites in his favor. But, as we have seen, the case at bar is absolutely different, so the case of *Somes vs. Molina*, supra, is not applicable.

The plaintiff also cites the case of *Gochuico vs. Ocampo* (7 Phil., ID;), which refers to the personal delivery of certain property mortgaged in favor of the plaintiff. The right of the plaintiff to the delivery of such property at the time the action was instituted, was not passed upon in that case; in fact, the defendant did not appear at the trial.

The case of *McMicking vs. Martinez and Go Juna* (15 Phil., 204), is also cited. In that case, the maturity of the obligations between the parties was not in question. The action in that case was instituted by the sheriff to determine the rights which Go Juna and Pedro Martinez, might have to certain funds in the possession of said sheriff, and it was held in that case that the credit of Go Juna which appeared in a public instrument, dated February 27, 1907, had preference over Martinez's credit which appeared in a judgment dated in 1908.

In the case at bar, however, we repeat that when the plaintiff Jacinto filed his claim with the sheriff, the dis-allowance of which gave rise to the cause of action in the present case, the credit which is the subject matter of said claim was not yet due and payable, and, consequently, the plaintiff Jacinto had no legal right as yet to the sum claimed by him, much less a preference over other credits and, therefore, did not have a preferential right over the credit of Carl Hess against Carpenter.

The fact that the plaintiff Jacinto later obtained a final judgment against Carpenter upon the credit referred to, because the instrument had become due and not because the same was not duly satisfied, has no retroactive effect so as to improve the right which said plaintiff Jacinto had on November 16, 1923 by making it preferential over the credit of Carl Hess.

Later, when the judgment in favor of the plaintiff Jacinto against Carpenter was partly executed, it was discovered that said Carpenter had no other attachable property, and, therefore, there was no occasion to discuss preferential credits inasmuch as there was no more property with which to pay them.

Hence, the plaintiff directs his claim against the sheriff and his sureties, on the ground that if said sheriff had granted his request of November 16, 1923, to retain P19,500 out of the proceeds from the sale of the property owned by Carpenter, the credit of the plaintiff Jacinto would have been fully satisfied; and that said sheriff, in refusing to retain such sum failed in his duty.

But, as we have said, the plaintiff Jacinto at the time he filed his claim on November 16, 1923, had no right to the retention which he asked, because the debt on which he based his claim was not yet due and payable, and it follows that the defendant sheriff was not bound to retain the proceeds requested, nor was it his duty to grant the claim of the plaintiff Jacinto, and, consequently, in disallowing said claim, he did not fail in his duty, nor did he incur any liability.

Therefore, the herein plaintiff has no right of action against the defendants.

For the purposes of the present decision, we do not believe it necessary to consider the other assignments of error.

By virtue of the above, the judgment appealed from is reversed, and the defendants are absolved from the complaint, without express pronouncement as to costs.

Malcolm, Johns, and Villa-Real, JJ., concur. Judgment reversed.

RESOLUTION ON MOTION FOR RECONSIDERATION

December 24, 1927

ROMUALDEZ, J.:

The herein defendants having been absolved from the complaint by a decision of the special division of this court that convened in Baguio during the months of April and May last, which was promulgated on May 3, 1927, the plaintiff, on the 10th of the same month, petitioned for an extension of the time within which to file a motion for reconsideration, which was presented in due time.

Upon consideration of this motion for reconsideration, the special division of this court set it for oral argument before the court in bane on October 14, 1927, at 9 o'clock in the morning, upon which date and hour the attorneys for both parties appeared and orally argued the cause before us.

The decision of the special division in this case was based principally on the fact that the plaintiff's credit was not yet demandable when the latter presented his claim to the sheriff, for which reason article 1924, of the Civil Code was not applicable to him; and, therefore, said credit could not be considered preferential over that of Carl Hess against F. W. Carpenter, adjudicated to the former in case No. 24607 of the Court of First Instance of Manila.

The plaintiff contends that "the Code in giving preference to certain credits, does not take into consideration their maturity, but only their nature in some cases, and the form in which they are evidenced in others." Such contention is untenable.

Title XVII, Book IV of the Civil Code, which treats of insolvency and preference of credits, means credits already-due. That is why it opens with the mention of the "fulfillment of obligations" in article 1911, which does not take place except when the obligations are already demandable. And when in an insolvency proceeding there are credits which are not yet due, the law, before applying its provisions concerning insolvency and preference of credits to them, deems all debts with a term due. Thus article 1915 of the Civil Code provides that "The declaration of insolvency shall mature all debts of the bankrupt." (*Italics ours.*) Similar rules may be found in article 1172 of the Spanish Code of Civil Procedure formerly in force in the Philippines, and in article 883 of the Code of Commerce. Hence, articles 1923, No. 1 and 1924, No. 1 of the same Code, while referring to credits in

favor of the state or to taxes in favor of provinces or municipalities, make particular mention of annual assessments due and unpaid.

Article 1924 invoked by the plaintiff means credits in an insolvency proceeding; that is why it makes special mention of solvency in sub-paragraphs A and F of paragraph No. 2. And, as the declaration of insolvency matures all debts with a term (art. 1915), it is plain that the debts falling under article 1924 are those due and demandable.

The plaintiff does not, nor can he, pretend that his credit was already due when he filed his claim with the sheriff. Unquestionably, it was not due by virtue of the contract, neither was it due by operation of the law, because the automatic maturity provided for in article 1915 of the Civil Code is not applicable since there had been no previous insolvency proceedings as provided in the Code.

Article 1121 of the Civil Code> which is cited in support of the motion, does not grant any preference of credit but only allows the bringing of the proper action for the preservation of the creditor's rights. And we should not lose sight of the fact that article 1125 of the same Code conclusively decrees that obligations with a term, such as the credit herein claimed by the plaintiff, are demandable only on the day fixed for their fulfillment.

Aside from this, the plaintiff had no right to demand that the defendant sheriff retain, nor was the latter under the obligation to retain, the proceeds of the sale of Carpenter's property which was seized in the execution of the judgment rendered against the said Carpenter in favor of his winning creditor Carl Hess. The herein plaintiff neither had, nor alleged that he had, any right or title to said Carpenter's property seized under execution. Under article 451, therefore, his third party claim could not prosper.

In virtue whereof the plaintiff's motion for reconsideration, is hereby denied. So ordered.

Malcolm, Ostrand, Johns, and Villa-Real, JJ., concur.

Villamor, J., reserves his vote.

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